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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

CARSON HARBOR VILLAGE, LTD.,

Plaintiff and Respondent,

v.

CITY OF CARSON,

Defendant and Appellant.

B211777

(Los Angeles County
Super. Ct. No. BS112239)

APPEAL from a judgment of the Superior Court of Los Angeles County.
James Chalfant, Judge. Reversed and remanded.

Aleshire & Wynder, William W. Wynder, Sunny K. Soltani and Jeff M. Malawy,
for Defendant and Appellant.

Gilchrist & Rutter, Richard H. Close, Thomas W. Casparian, and Yen N. Hope;
The Loftin Firm and L. Sue Loftin, for Plaintiff and Respondent.

Bien & Summers, Elliot L. Bien, for Amicus Curiae, Western Manufactured
Housing Communities Association.

The City of Carson appeals from the trial court's judgment granting the petition of Carson Harbor Village, Ltd. for a writ of administrative mandamus. By the writ, the court directed the city to approve a tentative tract map for the conversion of Carson Harbor Village's mobilehome park to a resident owned facility. We reverse the trial court's judgment and remand for further proceedings.

FACTS AND PROCEEDINGS

Respondent Carson Harbor Village, Ltd. owns Carson Harbor Village Mobile Home Park, a 420 unit mobilehome park in the City of Carson. In 2002, respondent decided to convert the park's legal structure. Up to that time, residents of the mobilehome park leased the spaces on which they placed their mobilehome coaches. The proposed conversion would subdivide the park into a collection of separate plots owned individually by each park resident, something akin to a condominium arrangement including common space.

In December 2002, respondent submitted its application to the City of Carson for the conversion's tentative tract map. Government Code section 66427.5 of the Subdivision Map Act applied to the conversion. The statute required, among other things, that respondent file with its application a survey of the park's residents documenting their level of support, if any, for the conversion.¹ (§ 66427.5, subd. (d); *El Dorado Palm Springs, Ltd. v. City of Palm Springs* (2002) 96 Cal.App.4th 1153, 1181-1182 (*El Dorado*) [park owner must conduct survey].) Over the next two years, the city requested and received from respondent additional information about the proposed conversion. In 2005, respondent submitted its residents' survey showing only 11 percent of residents voted for the conversion (the rest were against it or did not vote) and, in September 2006, city staff deemed the application to be complete. (See §§ 65941, 65943.)

¹ All further statutory references are to the Government Code.

a. Proceedings Before the Planning Commission

Upon completion of the application, section 66427.5 obligated the city to hold a hearing on whether the application complied with the statute's multiple requirements. (*Id.*, subd. (e) [hearing required].) Accordingly, the city's planning commission convened a series of public hearings. The hearings addressed statutory requirements for the conversion, such as respondent's preparation of a tenant impact report and whether the conversion was a subterfuge by respondent to escape the city's local rent control laws. (*Id.*, subd. (b).) The hearings also covered matters such as the park's deteriorating physical condition and whether the conversion furthered the city's general development plan of preserving open space and low and moderate income housing. Following multiple hearings, the planning commission disapproved the application in March 2007 on several grounds. First, the planning commission found the conversion was inconsistent with provisions in the city's general plan to preserve affordable housing and open space. Second, the commission concluded the statutorily required tenant impact report lacked sufficient information about the conversion's effects on the park's residents and wetlands. Finally, the commission also denied the conversion because the survey of residents did not comply with subdivision (d) of section 66427.5. The planning commission "determine[d] . . . that the applicant has failed to demonstrate that a survey of support was conducted in conformance with Government Code § 66427.5." The commission's resolution denying the application stated:

"There is no evidence in the record that the survey of support was conducted in accordance with an *agreement* between the applicant and a resident homeowners association that is independent of the applicant or the mobilehome park owner as required by Government Code § 66427.5(d)(2)." (Italics added.)

b. Appeal to the City Council

Respondent appealed the planning commission's denial to the Carson City Council. While the appeal was pending, respondent offered incentives to park residents hoping to win their support for the conversion. The purported enticements included

upgrades and improvements to the park at respondent's expense, discounted prices for mobilehome spaces, and an extended phasing out of rent control for residents who opted to remain renters instead of buying their spaces after the conversion. Against the backdrop of the promised enticements, respondent conducted a second survey of residents in July 2007 to measure tenant support for the conversion. Three hundred fifty-six of the park's 418 residents voted, with 65 percent remaining opposed to the conversion.

In September and October 2007, the city council held a series of meetings to hear respondent's appeal from the planning commission's denial of respondent's application. To prepare council members for the hearings, city staff gave the council a written report that summarized the planning commission's proceedings and findings. After hearing respondent's appeal, the council affirmed the planning commission's decision. Among the council's reasons for affirming was the council's finding that the 2005 survey of support submitted to the planning commission with the application did not satisfy section 66427.5's requirements. The council found: "There is no evidence in the record that the survey of support was conducted in accordance with an agreement between the applicant and a resident homeowners association that is independent of the applicant or the mobilehome park owner as required by Government Code § 66427.5(d)(2)." (The City Council did not consider the 2007 survey that had been conducted after the planning commission had denied respondent's application.) The council also rejected respondent's appeal on other grounds, including the purported inadequacy of the tenant impact report and the conversion's inconsistency with the city's general plan.

c. Petition for Writ of Mandate

Respondent filed in the trial court a petition for writ of mandate. The petition asserted section 66427.5 preempted the city's attempt to dictate terms for the conversion, such as adhering to the city's general plan, which went beyond those required by the statute. According to respondent, the city's review of the application was limited to

assessing respondent's compliance with section 66427.5, leaving the city no discretion to deny the application for any reason other than noncompliance with the statute. Asserting it had complied with the statute, respondent asked the court to order the city to approve respondent's application for a tentative tract map to convert the park to resident ownership.

The trial court issued a writ in respondent's favor. In its minute order, the court agreed with respondent that section 66427.5 prohibited the city from imposing any conditions on the city's approval of the conversion beyond ensuring respondent's application complied with the statute. (See *Sequoia Park Associates v. County of Sonoma* (2009) 176 Cal.App.4th 1270, 1275 (*Sequoia*) [section 66427.5 preempts local regulation of mobilehome park conversion]; *El Dorado*, *supra*, 96 Cal.App.4th at pp. 1163-1164 [same].)² Hence, the court found the city erred in disapproving the application on the grounds the conversion conflicted with the city's general plan to maintain affordable housing and open space. Additionally, the court found the city was time-barred from seeking additional information in the statutorily required tenant impact report about the conversion's effect on tenant displacement and nearby wetlands. Addressing specifically the statute's requirement of a resident survey, the court described as "flimsy" respondent's evidence that the 2005 survey submitted with its application complied with the statutory requirement of being conducted in agreement with an independent association of residents. The court found, on the other hand, the second survey undertaken in July 2007 was a survey under section 66427.5, conducted pursuant to such an agreement. Although the second survey was too late for the planning commission's consideration, the trial court held the city had waived the survey's tardiness because the city council did not reject respondent's application on that ground. Rather, the city had concluded – wrongly, in the court's estimation – that respondent had

² *Sequoia* was filed after the trial court's decision, but the trial court correctly anticipated the analysis set out in the Court of Appeal decision. In supplemental briefs, the parties addressed the effect of *Sequoia* on this appeal.

not conducted the 2007 survey in agreement with the residents. (In fact, as we will explain, the court misstated the city's assessment of the survey's legal adequacy, and this misreading by the court of the administrative record will figure in our analysis of the significance of the two surveys.) Thus, the court concluded, the city abused its discretion in finding respondent had not submitted a survey that satisfied section 66427.5.

Based on its findings, the court issued a writ directing the city to vacate its resolution denying respondent's application, and to reconsider the application in light of the court's findings. The city's appeal followed.

DISCUSSION

1. City's Contentions on Appeal

This appeal turns on several contentions involving the city's disapproval of the conversion application. First, the city contends respondent's survey of residents, which the city may use to consider the "bona fides" of the conversion, was legally inadequate. Second, the city contends it lawfully denied the conversion for its inconsistency with the city's general plan for maintaining affordable housing and open space. And third, the city contends the statutorily required tenant impact report failed to include adequate information about the conversion's effect on nearby wetlands and tenant displacement.

2. Introduction and Substantial Evidence Standard of Review

Section 66427.5 obligates a local government to designate a local authority to hear a mobilehome park owner's application for a tentative tract map for conversion of a mobilehome park. (*Id.* at subd. (e) ["The subdivider shall be subject to a hearing by a legislative body or advisory agency, which is authorized by local ordinance to approve, conditionally approve, or disapprove the map."].) In the City of Carson, that authority is the planning commission. A party adversely affected by the planning commission's

decision may appeal the decision to the city council.³ We review the city’s denial of respondent’s application for substantial evidence; we do not review, nor are we bound by, the superior court’s factual findings or legal conclusions. “The scope of our review of the subject administrative agency action in this case is identical with that of the superior court. The same substantial evidence standard applies, and the issue is whether the findings of the [public agency] were based on substantial evidence in light of the entire administrative record. [Citations.] . . . [W]e must examine the findings made by the [agency] itself to determine whether they were supported by substantial evidence, rather than limiting ourselves to a review of the findings made by the trial court. [Citations.] (*Desmond v. County of Contra Costa* (1993) 21 Cal.App.4th 330, 334-335; see also *American Canyon Community United for Responsible Growth v. City of American Canyon* (2006) 145 Cal.App.4th 1062, 1070.)

3. *The Statute*

Although other authorities are helpful to our analysis, the case ultimately turns on the meaning of one statute, section 66427.5. Accordingly, we set out the entire statute before we begin our substantive discussion:

“At the time of filing a tentative or parcel map for a subdivision to be created from the conversion of a rental mobilehome park to resident ownership, the subdivider shall avoid the economic displacement of all nonpurchasing residents in the following manner:

³ The city council’s resolution denying respondent’s administrative appeal framed the resolution as one to “affirm the planning commission’s decision to deny tentative parcel map. . . .” The resolution itself stated respondent’s application was “submitted to appropriate agencies as required by the Subdivision Regulations of the City of Carson.” It further stated that “The Planning Commission held duly noticed public hearings After consideration of the evidence and testimony, the Planning Commission voted to deny Tentative Parcel Map”

(a) The subdivider shall offer each existing tenant an option to either purchase his or her condominium or subdivided unit, which is to be created by the conversion of the park to resident ownership, or to continue residency as a tenant.

(b) The subdivider shall file a report on the impact of the conversion upon residents of the mobilehome park to be converted to resident owned subdivided interest.

(c) The subdivider shall make a copy of the report available to each resident of the mobilehome park at least 15 days prior to the hearing on the map by the advisory agency or, if there is no advisory agency, by the legislative body.

(d)(1) The subdivider shall obtain a survey of support of residents of the mobilehome park for the proposed conversion.

(2) The survey of support shall be conducted in accordance with an agreement between the subdivider and a resident homeowners' association, if any, that is independent of the subdivider or mobilehome park owner.

(3) The survey shall be obtained pursuant to a written ballot.

(4) The survey shall be conducted so that each occupied mobilehome space has one vote.

(5) The results of the survey shall be submitted to the local agency upon the filing of the tentative or parcel map, to be considered as part of the subdivision map hearing prescribed by subdivision (e).

(e) The subdivider shall be subject to a hearing by a legislative body or advisory agency, which is authorized by local ordinance to approve, conditionally approve, or disapprove the map. The scope of the hearing shall be limited to the issue of compliance with this section.

(f) The subdivider shall be required to avoid the economic displacement of all nonpurchasing residents in accordance with the following:

(1) As to nonpurchasing residents who are not lower income households, as defined in Section 50079.5 of the Health and Safety Code, the monthly rent, including any applicable fees or charges for use of any preconversion amenities, may increase from the preconversion rent to market levels, as defined in an appraisal conducted in accordance with nationally recognized professional appraisal standards, in equal annual increases over a four-year period.

(2) As to nonpurchasing residents who are lower income households, as defined in Section 50079.5 of the Health and Safety Code, the monthly rent, including any applicable fees or charges for use of any preconversion amenities, may increase from the preconversion rent by an amount equal to the average monthly increase in rent in the four years immediately preceding the conversion, except that in no event shall the monthly rent be increased by an amount greater than the average monthly percentage increase in the Consumer Price Index for the most recently reported period.”

4. *Adequacy of Resident Surveys*

The city's first contention on appeal is that respondent failed to comply with subdivision (d) of the statute because it did not obtain "a survey of support from residents of the mobilehome park for the proposed conversion." (§ 66427.5, subd. (d)(1).)

Before the hearing, the park owner must file with its application the results of the resident survey. The survey must be conducted pursuant to an agreement between the subdivider and an independent homeowners association, it must be by written ballot, and each occupied mobilehome space is entitled to have one vote. (§ 66427.5, subd. (d)(2)(3)(4).) "The results of the survey shall be submitted to the local agency upon the filing of the tentative or parcel map, to be considered as part of the subdivision map hearing prescribed by subdivision (e)." (§ 66427, subd. (d)(5).)

a. The 2005 Survey

As we have observed, the city empowered its planning commission initially to grant or deny respondent's application for a tentative tract map. The administrative record compiled by the planning commission contains substantial evidence that respondent's 2005 survey filed with its application did not comply with statutory requirements because respondent did not conduct the survey in "agreement" with a residents' homeowners association.⁴ The president of the homeowners' association and its lawyer each testified no agreement existed. Consistent with their testimony, it was counsel for respondent who conducted the survey with little, if any, visible involvement by a residents' association, sending out the survey under counsel's letterhead and asking that residents return the ballots to counsel. At best, respondent conducted the survey,

⁴ Although we review the administrative record ourselves for substantial evidence, we note that the trial court reached the same conclusion that in 2005 no agreement existed between respondent and a residents' association.

which was prepared by its attorney, “in conjunction with” (counsel’s words) the association.⁵

Against that somewhat vague description of involvement, the city heard testimony that the residents’ association told residents not to answer respondent’s survey, testimony from which we (and the trial court) drew the inference that no agreement existed with the association. Respondent counters that the trial court said during the hearing on respondent’s petition that if the court “was going to change the tentative at all it would be to say that the initial survey was adequate.” But the court’s rumination does not help respondent because the court did not change its tentative – indeed, the court finished its thought by saying “I guess I’ll leave it the way it is.” In any case, we review the city’s decision for substantial evidence, and we affirm so long as substantial evidence supports the city’s findings. (*Desmond v. County of Contra Costa*, *supra*, 21 Cal.App.4th at pp. 334-335; *American Canyon Community United for Responsible Growth v. City of American Canyon*, *supra*, 145 Cal.App.4th at p. 1070.) Because substantial evidence supported the finding that the 2005 survey had not been conducted “in accordance with an agreement” between respondent and the residents, the planning commission and the city council could have denied the application on that ground.

b. The 2007 Survey

The 2005 survey submitted to the planning commission was not, however, the end of the story. In July 2007, while its appeal from the planning commission to the city council was pending, respondent conducted a second survey in coordination with the city and the residents’ homeowner’s association, and presented the survey’s results to the city

⁵ More fully, respondent’s counsel testified the survey was done “in conjunction with the Board at that time. The president was Cindy McGregor and their attorney who was Mr. Semelsberger . . . the survey [was] actually disseminated by the board. Cindy McGregor was actively involved in that. The content and the final form was also worked out with the board through their attorney, David Semelsberger.”

council. The trial court interpreted subdivision (d) as allowing respondent to file its survey upon its appeal to the city council, an interpretation the city partly conceded at oral argument on appeal when it acknowledged the city's planning authority included both the planning commission and – in appellate counsel's words – the city council "by extension by right of appeal." Working from its premise that respondent could submit the results of its survey up to the time of its appeal to the city council, the trial court found the city waived the untimeliness of the second survey because "the City Council did not purport to deny the Application based on a failure to timely present the second Survey of Support."

We review for substantial evidence whether waiver occurred. (See *Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 983.) The city council's resolution affirming the planning commission discussed the particulars of only the 2005 survey. Although at one point its resolution did ambiguously refer to the "survey" without elaboration, elsewhere the resolution's description of the survey's vote tally made clear, however, that it was contemplating only the 2005 survey when it stated respondent "has failed to demonstrate that a survey of support was conducted in conformance with Government Code § 66427.5." The city council, to be sure, was aware of the second survey's results, but the council was assessing survey compliance based on the administrative record before it. That was the administrative record from the hearings before the planning commission that did not contain the 2007 survey. (The planning commission did not receive the results of the 2007 survey because the commission had denied respondent's application before respondent undertook the second survey.) The city council did not formally find the second survey was untimely; the council just ignored it in its resolution denying the application. We disagree with the trial court when it drew an inference of *waiver* by the council of the untimeliness of a survey that the council had not considered. Waiver of the time deadlines could only have occurred if the city council had taken the second survey into account in reaching its decision, and then

affirmatively found the survey noncompliant, because, for example, of a deficiency in the agreement between the homeowners and respondent.

We agree with the trial court, though for slightly different reasons, that the city council was required to take into account the second survey. The 2007 survey was a coordinated undertaking in which the city participated. Indeed, the city clerk counted the ballots and certified the vote tally, and the trial court expressly found “there is overwhelming evidence that a second Survey of Support was performed in July 2007 . . . through an agreement between [respondent] and the [residents’ homeowners association].” The city assisted the survey because it sought an outcome for the mobilehome park that all stakeholders – respondent, the residents, and the city – could support. Having at the very least implicitly encouraged respondent’s undertaking of a second survey, the city is estopped from ignoring it.

Estoppel against a public agency is available when under the special facts of the case, the interests of justice require it. (*City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 493-495.) As part of the process that produced the 2007 survey, respondent and the homeowners negotiated a Memorandum of Understanding (MOU) that significantly benefited the homeowners. The MOU included, among other things, upgrades and improvements to the park at respondent’s expense, discounted prices for mobilehome spaces, and an extended phasing out of rent control for residents who opted to remain renters instead of buying their spaces after the conversion. As part of this process, the city assisted in the creation of a new survey with the understanding that the second survey might avoid the deficiencies of the 2005 survey. Under those circumstances, the city may not turn around and act as if the survey had never taken place. (See § 66427.5, subd. (d)(5) [survey results “to be considered as part of the subdivision map hearing”].)

In directing the city to consider the 2007 survey, we express no view about whether the survey satisfies the statutory requirements for a survey of residents. Our direction is limited to precluding the city from rejecting the survey as untimely. If the city finds in the first instance that the survey is statutorily adequate, then the city must

find respondent complied with section 66427.5, subdivision (d), and, as we discuss next, the city may consider the survey's results in its assessment of whether the conversion is bona fide.

5. *The Bona Fides of the Conversion.*

The city denied map approval in part based on its finding that the conversion was not bona fide. The trial court concluded the city did not have authority under the statute to determine the bona fides of a mobile park conversion. As we explain, we disagree that a local agency is prohibited from determining whether a conversion is bona fide. We do find, however, that the city's view of its authority in this area went too far in the other direction by being overbroad. We remand to the city for it to redetermine the issue in light of its statutory obligation to consider the legal adequacy of the 2007 survey as guided by a correct understanding of its statutory authority.

The notion that a city may not consider the bona fides of a conversion appears to have emerged from *El Dorado, supra*. That decision held that a city's review of a mobilehome park conversion was limited to confirming the park owner had complied with the conversion statute. (See *El Dorado, supra*, 96 Cal.App.4th at pp. 1163-1164.) From that holding sprang the idea that the city's review was so narrowly circumscribed that it could not even consider the bona fides of a conversion. (See *Sequoia, supra*, 176 Cal.App.4th at p. 1286, fn. 6.)

Our examination of *El Dorado*, *Sequoia*, and the 2002 statutory amendments leads us to conclude that a local agency may, within strict confines, determine the bona fides of a conversion. *El Dorado* concluded that section 66427.5 did not expressly permit local agencies to deny a conversion to a "developer who was engaged in a sham or fraudulent transaction which was intended to avoid the rent control ordinance." (*El Dorado, supra*, 96 Cal.App.4th at p. 1165.)⁶ The court expressed concern about the problem but found

⁶ The term "avoid the rent control ordinance" presumably referred to past conversions in which not all park spaces were sold. Instead, some were re-rented under

the solution rested with the Legislature. “Although the lack of such authority may be a legislative oversight, and although it might be desirable for the Legislature to broaden the City’s authority, it has not done so.” (*Ibid.*) Only the courts, not local agencies, could address sham conversions. (*Ibid.*)

The opinion in *El Dorado* was filed in March 2002. Later that same year, the Legislature took up the court’s invitation and amended section 66427.5. As part of this process, the Legislature acknowledged the deficiency in the act identified by the court in *El Dorado* that precluded local agencies from preventing “nonbona fide conversions.” (Stats. 2002, ch. 1143, § 2, A.B. 930.) Expressly in response to *El Dorado*, the Legislature added section 66427.5, subdivision (d) which for the first time required the applicant to “obtain a survey of support of residents of the mobilehome park.” (§ 66427.5, subd. (a)(1).⁷ In doing so, the Legislature identified the newly enacted survey requirements as a device to assist the local agency in approving only bona fide conversions. (See *Sequoia*, *supra*, 176 Cal.App.4th at p. 1296 [the limited nature of the amendment meant the Legislature deemed the survey sufficient to address the bona fide

circumstances that allowed the landlord to avail itself of state law or local ordinance authorizing an increase over the preconversion rent.

⁷ See Statutes 2002, ch. 1143, § 2 A.B. No. 930 amending section 66427.5 to add subdivision (d) mandating resident survey. [“It is the intent of the Legislature to address the conversion of a mobilehome park to resident ownership that is not a bona fide resident conversion, as described by the Court of Appeal in *El Dorado*, *supra*, 96 Cal.App.4th 1153. The court in this case concluded that the subdivision map approval process specified in Section 66427.5 of the Government Code may not provide local agencies with the authority to prevent nonbona fide resident conversions. The court explained how a conversion of a mobilehome park to resident ownership could occur without the support of the residents and result in economic displacement. It is, therefore, the intent of the Legislature in enacting this act to ensure that conversions pursuant to Section 66427.5 of the Government Code are bona fide resident conversions.”]

Sequoia recognized that the 2002 amendments were in response to “the continuing problem of mobilehome park conversion and the phrase ‘bona fide’ . . .” following *El Dorado*. (*Sequoia*, *supra*, at p. 1287.)

conversion problem].) The Legislature explained its intent that local government determine the bona fides of a conversion in the uncodified portion of the 2002 amendments:

“This bill seeks to provide a measure of that support for *local agencies* to determine whether the conversion is truly intended for resident ownership, or if it is an attempt to preempt a local rent control ordinance. The results of the survey would not affect the duty of the local agency to consider the request to subdivide pursuant to Section 66427.5 but merely provide additional information.” (Sen. Con. Amends. to Assem. Bill No. 930 (1999-2000 Reg. Sess.) p. 5; italics added.)

Stated slightly differently, it stands to reason that the Legislature did not intend the survey to be an idle exercise but rather meaningful input for the city’s review of the application. The statutory reference to “local agencies” indicates that those agencies, with their wide experience in land use matters (see generally *Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1151), may determine bona fides in the first instance.

Although the city has the legal authority to deny a conversion that is not bona fide, the city appears to have misjudged its task in making that determination. Whether the conversion is or is not bona fide turns on the state of mind of the park owners. This is seen not only from the plain meaning of “bona fide conversion” but also the legislative history on which the city itself relies. A bona fide conversion is one that the park owner *expects* to in fact produce a change in the estate interest of a significant percentage of the mobilehome lots from tenancy to ownership. An inquiry into the bona fides of the conversion must, therefore, focus on the state of mind of the mobile park owner. As we have observed, the 2002 legislative amendments were designed to assist local agencies to determine “whether the conversion is truly intended for resident ownership, or if it is an attempt to preempt a local rent control ordinance.” (Sen. Con. Amends. to Assem. Bill No. 930 (1999-2000 Reg. Sess.) p. 5.) The statute’s use of “intended” and “attempt” direct attention to the park owner’s state of mind.

But the city's resolution did not focus on the state of mind of the park owner. Rather the resolution shows that the city has equated the bona fides of a conversion with the level of tenant support. Section 12(c) of the Resolution states:

“[T]he applicant has failed to demonstrate that there is sufficient resident support for this application sufficient to enable the Planning Commission to find and determine that approval of this application will result in a *bona fide* conversion to resident ownership in conformance with Government Code § 66427.5.”

Any doubt that the city has measured bona fides by tenant support alone is dispelled by the arguments made by the city in this appeal. The city contends that the determination of a bona fide conversion does not involve an inquiry into the park owner's intent. In its opening brief, the city states: “[T]he issue of whether a conversion is bona fide is to be determined based on whether there is resident support for the conversion application.” Repeating the test in the reply brief, the city argues the second survey demonstrated that the application “was wholly lacking in bona fide resident support.” But that is not what the legislative amendments address. The amended language states that surveys are relevant in the determination of “bona fide resident conversions.” A *resident conversion* is not the same as *resident support*.⁸

The uncodified legislation described the survey as a device to enable local agencies “to determine whether the conversion is truly intended for resident ownership, or if it is an attempt to preempt a local rent control ordinance.” The level of tenant support, or lack thereof, may be circumstantial evidence of the presence or absence of

⁸ The city suggests that the park owner's state of mind is only relevant to whether the conversion is a “sham” (*El Dorado, supra*, 96 Cal.App.4th at p. 1165), not whether it is bona fide. We disagree. A “sham” is essentially the converse of “bona fide”; something that is a sham cannot be bona fide, and vice versa.

bona fides but it is not dispositive. “The law is not intended to allow park residents to block a request to subdivide.”⁹

We agree with the city that it may *consider* the survey in deciding whether a conversion is bona fide for that is exactly what section 66427.5, subdivision (d)(5) says. As the 2002 amendments intended, the survey provides a *measure* (a yardstick, if you will) of tenant support, but the language is immediately followed by the legal test for a bona fide conversion: the owner’s intent to truly provide for tenant ownership and the absence of intent to avoid rent control. The city must decide that question in approving or denying the application; the absence of majority support for the conversion among residents cannot be dispositive.¹⁰ (*Sequoia, supra*, 176 Cal.App.4th at pp. 1286-1287; *El Dorado, supra*, 96 Cal.App. at pp. 1172-1173.)

6. *Inconsistency with the City’s General Plan*

The city also disapproved the application for conversion because the city found the conversion conflicted with the city’s general plan to maintain affordable housing and preserve open space. Respondent contends this ground was unlawful because the city’s review of the application is limited to determining whether the application complied with the statutory requirements of section 66427.5. Respondent’s contention rests on subdivision (e) of section 66427.5, which states, “The subdivider shall be subject to a hearing by a legislative body or advisory agency, which is authorized by local ordinance

⁹ The *Sequoia* court struck down on preemption grounds the Sonoma County ordinance that expressly tied whether or not a conversion was bona fide to a specific percentage of tenant support. (See *Sequoia, supra*, 176 Cal.App.4th at p. 1292.) In theory, a mobile park conversion could be bona fide without *any* resident support. For example, the park owner might have signed offers by third persons to purchase all of the park’s lots.

¹⁰ Respondent acknowledges the results of the survey are relevant to whether a conversion is bona fide. It argues only that the courts, not the local agency, must decide the issue.

to approve, conditionally approve, or disapprove the map. The scope of the hearing shall be limited to the issue of compliance with this section.” Respondent further asserts the Legislature intended state law to completely occupy the arena of mobilehome park conversions, and thus preempt all local ordinances and regulations. The city disagrees, asserting that the state’s regulation of mobilehome park conversions does not interfere with a local government’s traditional police and zoning powers.

The recent decision in *Sequoia*, *supra*, 176 Cal.App.4th 1270 is dispositive in establishing respondent is correct. The *Sequoia* court closely examined the question of whether section 66427.5 preempted a local government’s attempt to impose additional requirements on a mobilehome park conversion beyond those requirements the statute identified. (*Id.* at p. 1274.) In *Sequoia*, the county had adopted an ordinance that had several provisions governing the county’s approval of a conversion, including the conversion’s effect on the county’s general plan of preserving affordable housing and maintaining open common areas within the mobilehome park. (*Id.* at pp. 1274-1275, 1288, 1290.) The *Sequoia* court engaged in a detailed and well-reasoned analysis of preemption principles. (*Id.* at pp. 1277-1282.) From its analysis, the court held section 66427.5 preempted the county’s attempt to regulate the conversion process or to impose additional requirements beyond compliance with section 66427.5. (*Id.* at pp. 1274-1275.) Citing subdivision (e) of the statute, the court stated: “[W]e conclude that the ordinance is expressly preempted because section 66427.5 states that the ‘scope of the hearing’ for approval of the conversion application ‘shall be limited to the issue of compliance with this section.’ ” (*Id.* at p. 1275; see also *El Dorado*, *supra*, 96 Cal.App.4th at pp. 1163-1165 [same].)

We find *Sequoia*’s analysis persuasive. Its analysis supports its conclusion that “the state has taken for itself the commanding voice in mobilehome regulation” and that “[l]ocalities are allowed little scope to improvise or deviate from the Legislature’s script.” (*Sequoia*, *supra*, 176 Cal.App.4th at p. 1293.) Accordingly, we see no purpose in rehashing its discussion here and instead adopt its holding that section 66427.5

“express[ly] preempt[s] the power of local authorities to inject other factors [besides those the statute identifies] when considering an application to convert an existing mobilehome park from a rental to a resident-owner basis.” (*Id.* at p. 1297.) Hence, we agree with the trial court that the city cannot reject the application for conversion because the conversion conflicts with the city’s general plan.¹¹

7. *Adequacy of Tenant Impact Report*

The city also disapproved the application for conversion because the city found the statutorily required tenant impact report was inadequate. Section 66427.5, subdivision (b) states the park owner “shall file a report on the impact of the conversion upon residents of the mobilehome park to be converted to resident owned subdivided interest.” On appeal, the city focuses on two purported sets of broad inadequacies in the application: the report’s failure to address the conversion’s effect on wetlands that were a substantial part of the city’s open space, and its failure to adequately address economic displacement of tenants from the conversion. As for the wetlands, the city found the tenant impact report did not include information concerning (1) the “extraordinary measures needed to meet the requirements of the California Department of Fish and Game . . . [and] the unreasonable liability and maintenance responsibilities that will be borne by the resident owners following the date of conversion” and (2) “the significant remediation costs should the park be determined responsible for contamination within the wetlands.” As for tenant displacement, the city found the report did not include information about: (1) “the impact of the conversion upon displaced residents;” (2) “the availability of adequate replacement space in mobilehome parks;” (3) “the impact of rent increases on the continued financial viability of non-low income non-purchasing residents remaining as park renters;” (4) “the likely increase in rental rates on non-low income non-purchasing residents [and] the impact of such rental adjustments on available

¹¹ In its supplemental brief, the city concedes that *Sequoia* holds that section 66427.5 preempts local mobilehome ordinances. The city urges us not to follow *Sequoia*.

disposable income [and whether] . . . such rent increases . . . could or will result in short- or long-term resident displacement;” (5) whether “the economic impact of annual rent increases may result in resident displacement;” and (6) the “availability of adequate replacement space in mobilehome parks.”

The trial court concluded that the city’s desire for information about the conversion’s effect on wetlands and tenant displacement was reasonable in helping the city assess the impact of the conversion on the park’s residents. The court found, however, that the city wrongfully insisted that respondent provide additional information about those effects. The court reasoned the city could not request additional information – nor reject the application for missing information – after city staff had deemed the application to be “complete.” (See §§ 65941, 65943.) We note, initially, that the “completeness” threshold exists to start the clock running on the city’s review of the application. (*Orsi v. City Council* (1990) 219 Cal.App.3d 1576, 1583.) By starting the clock, the process imposes an end time for what might otherwise become an endless series of delays, amounting effectively to a pocket veto of an application for conversion. (Accord *Orsi* at pp. 1578, 1586.) Such does not, however, preclude a city from, as a general matter, requesting more information. (See § 65920 et seq. (“Permit Streamlining Act”) [supplementing permit application with more information].)

Section 65944 expressly authorizes a local agency processing a permit application to request the applicant to “clarify, amplify, correct, or otherwise supplement” information in the application. (§ 65944, subd. (a).) The agency may not, however, request “any new or additional information” that the agency had not previously identified as needed in an application. (§§ 65944, subd. (a), 65940, subd. (a).) We recognize the challenge in distinguishing between prohibited “new or additional” information, on the one hand, and permitted “amplifying” or “supplementing” information, on the other. The fact remains, as the statute explains, the city is not barred from requesting more

information once the application is “complete.”¹² The record does not, however, enable us to find as a matter of law that the information the city sought was prohibited “new or additional” information given that respondent had already provided information about wetlands and tenant displacement as part of the application process. Accordingly, since we remand this matter for other determinations, we also remand for determination of the adequacy of the tenant impact report. The city’s review of the tenant impact report is limited to confirming whether the report complies with section 66427.5. (See § 66427.5, subd. (e) [hearing limited to determining compliance with statute].) In reviewing the report’s adequacy, the city, shall in the first instance, determine whether the information it seeks is prohibited “new or additional” information, or information properly sought to “clarify, amplify, correct, or otherwise supplement” the application. The city’s review may not, however, impose extra-statutory conditions for the reasons we have already discussed. (See *Sequoia*, *supra*, 176 Cal.App.4th at p. 1297; *El Dorado*, *supra*, 96 Cal.App.4th at p. 1165.)

DISPOSITION

The judgment is reversed, and the matter is remanded to the trial court with directions to require the Carson City Council to review the application by Carson Harbor Village, Ltd. for conversion of the mobilehome park guided by the principles articulated in this opinion. In its review, the city council must determine whether the 2007 survey complies with the statute, without regard to the timing of the submission of the survey. If the city council finds the survey is adequate, the city council must consider the survey and may do so in determining whether the conversion is bona fide. In analyzing whether the conversion is bona fide, the city council may not, however, impose a minimum threshold of tenant support for the conversion. Second, the city council may not disapprove the application on the ground that it conflicts with the city’s general plan.

¹² The trial court stated: “The City Council had no discretion but to accept the [tenant impact report] as complete and could not require new information.”

And third, the city council must, in the first instance, determine whether the tenant impact report complies with the requirements for such a report as stated in section 66427.5, subdivision (b), taking into account the City Council's limited ability to require more information under sections 65940, subdivision (a) and 65944, subdivision (a). If the city council concludes the conversion is bona fide and the tenant impact report complies with statutory requirements, the city council must approve the application. If the city council concludes otherwise and disapproves the application, the city council must specify the grounds for its disapproval, with the trial court retaining jurisdiction to review the application in further proceedings considering Carson Harbor Village, Ltd.'s petition for writ of mandate. (See *El Dorado, supra*, 96 Cal.App.4th at p. 1182.)

Each side is to bear its own costs on appeal.

RUBIN, J.

I CONCUR:

FLIER, J.

BIGELOW, P. J., Dissenting:

I respectfully dissent.

The trial court in this case issued a thoughtful 11-page ruling, detailing its reasons for granting the petition for writ of mandate. I would affirm its ruling.

First, the majority concludes, incorrectly in my view, that the judgment must be reversed to allow the city an opportunity to determine whether CHV obtained a proper survey of support of residents of the mobilehome park for the proposed conversion as required by Government Code section 66427.5, subdivision (d)(1).¹

I agree with the majority's conclusion that the 2005 survey was not conducted in accordance with an agreement with the residents' HOA and that the 2007 survey was. There can be no serious dispute that the second survey was, in fact, done pursuant to an agreement between CHV and the residents' HOA — the administrative record is unambiguous in this regard. I agree with the majority that the city is estopped from rejecting the 2007 survey, but part with its conclusion that remand is required for the city to consider it. The city council had the 2007 survey of residents before it when it made its decision to deny CHV's tentative subdivision map for conversion. The denial of the city council was based on its factual finding that the 2005 survey did not comply with the requirement that it be done in agreement with the residents' HOA. We review the city council's denial on this factual basis for substantial evidence. There is no substantial evidence to support a finding of a noncompliant survey of residents. The record shows that the city council had the compliant 2007 survey which was completed through an

¹ All further section references are to the Government Code. Section 66427.5 does not define what constitutes a "survey of support," but even the majority agrees that this term does not mean that a majority of the tenants must vote in support of a conversion to allow the local agency to approve a subdivision of a mobilehome park.

agreement between CHV and the residents' HOA. Just because the city council chose to ignore the compliant 2007 survey it does not mean they should get a second bite at the apple.

I further disagree with the majority that the 2002 amendment to section 66427.5, when it added subdivision (d), was either by its plain meaning or its legislative intent, meant to grant or expand the authority of local governments to determine the *bona fides* of a conversion. First, a legislative analysis cited by the trial court explicitly states that “[t]he result of the survey *would not affect the duty of the local agency* to consider the request to subdivide pursuant to section 66427.5 but merely provide [the agency with] additional information.” Since the amendment to section 66427.5 was made directly in response to the decision in *El Dorado Palm Springs, Ltd. v. City of Palm Springs* (2002) 96 Cal.App.4th 1153 (*El Dorado*), it is hard to imagine a clearer statement to indicate that the Legislature did not intend to modify *El Dorado*'s holding that a city's review of a mobilehome park conversion in the context of section 66427.5 is limited to confirming whether the park owner complied with the requirements of section 66427.5. (*El Dorado, supra*, 96 Cal.App.4th at pp. 1163-1165.) But, if there were any question, the intent of the Legislature is all the more clear because, when adding subdivision (d)'s requirement for a survey of support, the Legislature retained section 66427.5's then-existing language, now found in subdivision (e), that “[t]he scope of the hearing shall be limited *to the issue of compliance with this section.*” (Emphasis added.)

In the same vein, I further disagree with the majority's conclusion that a city is at liberty — in the context of a hearing pursuant to section 66427.5, subdivision (e) — to deny a conversion that is not bona fide based upon a determination of “the state of mind of a park owner.” The majority creates from whole cloth a rule that whether a conversion is bona fide turns on the state of mind of the park owners, and then decides that the city, contrary to the statutory scheme and the decision in *El Dorado*, is at liberty to make the determination which falls within that purview. I part company with that analysis.

I also believe the trial court appropriately found that any defect in the Tenant Impact Report (TIR) was waived when the city's staff deemed the application complete. (*Orsi v. City Council* (1990) 219 Cal.App.3d 1576, 1584-1585 (*Orsi*).) Section 66427.5, subdivision (b), requires a subdivider to "prepare a report on the impact of the conversion upon residents of the mobilehome park to be converted to resident owned subdivided interest." The Permit Streamlining Act (§ 65920 et seq.) governs this area of the law and provides that a public agency "which has the principal responsibility for carrying out or approving a project" – called the "lead agency" – must inform a permit applicant in writing whether the application is complete and accepted for filing. (§§ 65929, 65943.) If the lead agency fails to notify the applicant one way or the other, the application " 'shall be deemed complete for purposes of this chapter.' " (*Orsi, supra*, 219 Cal.App.3d at p. 1583, citing § 65956, subd. (b).) When adopting the Permit Streamlining Act, the Legislature determined there was "a statewide need to ensure clear understanding of the specific requirements which must be met in connection with the approval of development projects and to expedite decisions on such projects." (§ 65921.)

The majority agrees the Permit Streamlining Act prohibits a local agency which is processing a permit application from requesting new or additional information that it did not previously identify was needed in the application. (Maj. opn. at p. 22.) At the same time, however, the majority concludes the record does not "enable us to find as a matter of law that the information which the City of Carson sought was prohibited 'new or additional' information, on the one hand, [or] permitted 'amplifying' or 'supplementing' information, on the other." (*Ibid.*) The TIR is part of the record on appeal, and I read it otherwise. There are two areas the city determined were lacking in the TIR, justifying denial of CHV's tentative map: information on the impact of conversion on nearby wetlands and tenant displacement information. As noted by the trial court, "[t]he information concerning wetlands was not requested before the Application was deemed complete. This information is new and not part of a request to clarify previously submitted information." As for information about tenant displacement, the TIR included

information on the impact of conversion on residents who elect not to purchase. The city council requested additional information on residents who elected not to purchase. This information would not amplify or supplement information already provided in the application; it was a request for a new area of additional information. The city council had no authority to deny the application once the TIR was complete and it did so in error.

On a final note, I feel compelled to clarify where I understand this case to stand on a procedural front. When the Legislature enacted the existing version of the Subdivision Map Act (§ 66410 et seq.) in 1974, the Act required, in broad terms, that a tentative map be filed and approved in accord with the provisions prescribed in Chapter 3, Article 2 of the Act (§ 66452 et seq.) and that a final map would then be filed and approved in accord with the provisions of Chapter 3, Article 4 of the Act (§ 66456 et seq.). At the time of its enactment, the Act did not include any of the sections involved in this case dealing with the specific circumstance of subdividing an existing mobilehome park.

In 1991, the Legislature added section 66427.5 to the Act’s “General Provisions” (Chapter 1, Article I; § 66425 et seq.) in a transparent attempt to provide an added layer of directly-focused protections to residents of mobilehome parks faced with the prospect of a park owner’s decision to subdivide the property. The section’s original language dealt with a funding program to assist residents in purchasing their park spaces, and is not relevant for purposes of the current opinion. Then, in 1995, the Legislature amended section 66427.5 to read in a form recognizable to us today, providing that a mobilehome park owner is required to “avoid the economic displacement of all nonpurchasing residents” by adhering to prescribed procedures, including the preparation of a report on the impact of the park’s conversion on displaced residents. (Stats 1995, ch. 256, § 5, p. 883.)² At the same time, the Legislature first added language providing that “[t]he subdivider shall be subject to a hearing by [a local agency having authority to approve a tentative map]. The scope of the hearing shall be limited to the issue of compliance with

² The 1995 legislation also amended section 66427.4, which requires a report on the impact of the conversion on displaced residents.

this section. . . .” (See former § 66427.5, subd. (d); Stats 1995, ch. 256, § 5, p. 883.)

The Summary Digest of the 1995 legislation provides: “This bill would . . . add further requirements for avoiding economic displacement of nonpurchasing residents, including requiring that the subdivider be subject to a hearing on the matter, as specified.”

(See Legis. Counsel’s Dig., Sen. Bill No. 310 (1989-1991 Reg. Sess.) Summary Dig., p. 75.) In 2002, the language requiring a hearing to determine a park owner’s compliance with section 66427.5 was moved to a new subdivision (e) when subdivision (d)’s requirement for a survey of support was added. (Stats 2002, ch. 1143, § 1.)

In light of the legislative history, I interpret section 66427.5, subdivision (e), to have added a preliminary step in the subdivision process in the context of a mobilehome park conversion, adding a special hearing on the limited issue of resident displacement under the section as a whole, apart from the normally-followed processes for approval of a tentative map (Chapter 3, Article 2) and approval of a final map (Chapter 3, Article 4). I do not believe that section 66427.5, subdivision (e), was intended to eliminate the broader structure of the Subdivision Map Act vis-à-vis a tentative map and a final map, and the approval of the same. With this understanding in mind, the limitation on the scope of the hearing that is prescribed in section 66427.5, subdivision (e), makes sense. As I read the statutes, once a subdivider and local agency have finished the required hearing to determine compliance with section 66427.5, the now-deemed compliant informational materials, are ready for the tentative map approval process.

What all this means is that the cause before us today primarily deals with discrete issues concerning section 66427.5, the survey of support required by the section, and the limited hearing required under the section to determine whether a mobilehome park owner complied with the section. I simply disagree that broader issues, such as the “bona fides” of a subdivision of a mobilehome park fall within the scope of section 66427.5.

In the case before us today, the city of Carson denied CHV’s tentative map on the grounds that CHV did not obtain a proper survey of support under section 66427.5, and did not submit a proper TIR under section 66427.4. It appears the city considered issues

under section 66427.5 at the same time it considered approval of CHV's tentative map. I express no view on the propriety of a proceeding in this fashion, but I agree with the trial court that the city improperly determined that CHV did not comply with section 66427.5, and that the city improperly determined that CHV did not comply with section 66427.4. Inasmuch as these were the fundamental grounds upon which the city denied approval of CHV's tentative map, the city's decision to deny approval of CHV's tentative map cannot stand.

I would affirm the trial court's decision to grant the writ of mandate.

BIGELOW, P. J.